



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 01225-99

12 August 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by Headquarters Marine Corps dated 15 April and 24 May 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

1225-99

IN REPLY REFER TO:

1070

MIF

15 APR 98 99 *dm*

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SSgt *[REDACTED]*
[REDACTED]

1. We reviewed SSgt *[REDACTED]*'s application and supporting documents concerning the request for removal of counseling entry noted on page 11, Administrative Remarks.

2. MCO P1070.12, Marine Corps Individual Records Administrative Manual (IRAM) authorizes commanders to make service record book (SRB) entries on page 11 for those entries considered essential to document an event in a Marine's career for which no other means or methods of recording exists.

3. The page 11 counseling entry dated 21 *April* *dm* ~~March~~ 1998, being requested for removal meets the standard for counseling in that it list specific deficiencies, recommendations for corrective action, and where assistance could be found.

4. In view of the above it is recommended that the request for removal of page 11 counseling entry be denied.

5. As to the question of the page 11 entry being prejudicial based on the member's acquittal we recommend that the office of the Staff Judge Advocate of the Marine Corps provide advisory opinion and recommendation.

[REDACTED]

Head, Manpower Information System
Field Support Branch
Manpower Management Information
System Division
By direction
Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

1225-99

IN REPLY REFER TO:

1070

JAM3

24 MAY 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF SSGT [REDACTED]. [REDACTED]
USMC

1. We are asked to provide an opinion regarding Petitioner's request to remove a Page 11 counseling entry from his records.

2. We recommend the requested relief be denied.

3. Background. On 17 December 1997, Petitioner apparently visited the spouse of a subordinate after hours for the purpose of conducting a unit recall. That visit resulted in a Page 11 counseling entry on 21 April 1998 for poor judgment and inappropriate behavior. Petitioner submitted a rebuttal statement to this counseling entry. The incident also apparently led to a trial by special court-martial on 28 and 29 July 1998, which resulted in Petitioner's acquittal.

4. Analysis. Petitioner seeks removal of this Page 11 entry because he was later acquitted of criminal charges arising out of the incident. That would be a sufficient basis to remove such a record if the record referred to criminal charges or disciplinary action. However, neither the counseling entry, nor Petitioner's rebuttal, mentions criminal charges, courts-martial, or other disciplinary proceedings. The counseling entry appropriately records a fact of Petitioner's military career, and that he was counseled on that day for the reasons specified. Petitioner's response provides his very detailed version of events. We find no error or injustice warranting removal of this Page 11 counseling entry.

5. Conclusion. Accordingly, we recommend relief be denied.

[REDACTED]
Acting Head
Military Justice Branch
Judge Advocate Division